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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.2712 of 2007

Society of Friends of the
Sassoon Hospitals & Ors. ..Petitioners

Versus

Union of India & Ors. ..Respondents

Mr. Abhay Nevagi with Mr. Yogesh Parangape i/b. Paras Kuhad
& Associates for the Petitioners
Mr. M.S. Bharadwaj with Mr. A.M. Sethna for Respondent No.1.
Mr. A.H. Palekar, AGP for Respondent No.2.
Mr. O. Hareendran, Scrutiny Officer of Respondent No.5
present in person.

CORAM : F.I. REBELLO &
R.M.SAVANT, JJ.
DATED : 16TH APRIL, 2007.

P.C.

. Rule. Heard forthwith.

2. The petitioners are concerned with the care of abandoned and homeless children. In the instant case we are concerned with in country adoption. The petitioners approached this Court on the ground that though there is an order of this Court conferring power on the District Judge to give a child in guardianship/adoption outside the State, the learned Judge insists that in every case an order should be brought from this Court.

. Appearance has been put up on behalf of Respondents including on behalf of respondent No.5. Shri O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare has brought to our attention the order of this Court dated 16th April, 1986 in Misc. Petition No.517 of 1985.

One of the conditions imposed is "In a suitable case therefore an institution may place a child in foster care outside the State. But for the protection of the child the institution should take an undertaking from such foster parent that he will submit to the jurisdiction of this Court for the purpose of obtaining any order in respect of this child. It should also be made clear to the person concerned that the child continues to remain in the custody of the institution concerned, but is only temporarily placed with that person in foster care pending the child's adoption order or guardianship order, and such placement in foster care will not be considered as relinquishment of custody by the institution concerned. A clause to this effect should form a part of the foster care agreement."

. On behalf of the petitioners our attention is also invited to another order dated October 6, 1988 in Indian Adoption Petition No.56 of 1988 to the following paragraph:-

> "4. The agency or the institution shall hereafter ensure that before placement in foster care the proceedings are instituted in this Court for appointment as guardian or in the City Civil Court, Bombay or District Court in Muffusils for adoption under provisions of the Hindu Adoption & Maintenance Act. The agency could place the child in foster care only after lodgment of such proceedings. The proceedings so instituted should come up before the Court within a period of four months, and then the Court would take a final decision as to whether the

child should be given in adoption or foster parents should be appointed as guardian. The agency or institution in the intervening period should ascertain as to how the child is adjusted in the family of the foster parents."

. Under Section 42 of the Juvenile Justice (Care and Protection of Children) Act, 2000 it provided that foster care may be used for temporary placement of those infants who are ultimately to be given for adoption. It is not necessary to refer to the other predicates of the Section.

. Based on the procedure set out by order of the Court the children were being given under foster care to the prospective adoptive parents who either were residing in the State or outside the State. For both, whether residing inside or outside there is an Agreement which the adoptive parents have to enter into.

4. Our attention is next invited to order dated October 19, 2006 in Writ Petition No.7004 of 2006. It appears that was a case of intra country adoption. A learned Bench of this Court in para.3 reproduced the conditions laid down in Misc. Petition No.517 of 1985 in the case of Joseph Kallor Cheeky Josey. Condition No.6 read as under:-

"(6). The agency or the institution shall not place the child in foster care with foster parents who are not ordinarily residing in the State of Maharashtra."

In the order the learned Bench directed, that Point Nos. 1 to 5 of the earlier order be complied with. In so far as Condition No.6 is concerned, the condition was modified on giving an undertaking that atleast one of the foster parents would remain in the State of Maharashtra till the matter was finally decided by the Family Court. Accordingly, Condition No.(6) was modified.

4. In view of this variation in condition No.6, it appears that the Family Courts/District Court are insisting that one of the parents should reside in the State of Maharashtra or the institution/adoptive parent should move this Court for variation of the order.

. First and foremost as we have noted Writ Petition No.7005 of 2006 was a case of intra country adoption. The issue of the child being taken out of the Country by an adoptive parent would be distinct than a case of a child in case of in country adoption. The orders of this Court in Misc. Petition No.517 of 1985 and Indian Adoption Petition No.56 of 1988 were both in respect of in country adoption. The order in Misc. Petition No.517 of 1985 dated 16th April, 1986 was also in a case of in country adoption where condition No.6 was imposed. The order of 16th April, 1986 it appears was reconsidered on 10th September, 1986 wherein the paragraph providing for giving the children to adoptive parents pending proceedings even outside the State was provided for. This modification it appears was not brought

to the attention of the learned Division Bench which heard the Writ Petition No.7005 of 2006 on October, 19, 2006. Apart from that those decisions came before the provisions were made by statute providing for foster care pending the adoption.

. In that light of the matter we are of the opinion that the main object of the statute being the interest of the child and some of the directions are as to the suitability of the adoptive parents which can only be considered during the time when the child is kept in foster care, it is but essential to see that even foster parents who may not be residing in the State of Maharashtra, but are taking the child in adoption from institutions in the State of Maharashtra are permitted to do so by following the long standing practice that was being followed by the Courts in the State.

. Considering the above in our opinion the order of this Court dated October 19, 2006 will have to be confined to a case of intra country adoption and not in country adoption. In country adoption will be governed by the directions issued in Misc. Petition No.517 of 1985 dated 16th April, 1986 and as modified by the order dated 10th September, 1986 and thereafter issued in the form of Practice Directions issued by this Court. We, therefore, direct that Condition No.6 which read as under:-

"In a suitable case therefore an institution may

> place a child in foster care outside the State. But for the protection of the child the institution should take an undertaking from such foster parent that he will submit to the jurisdiction of this Court for the purpose of obtaining any order in respect of this child. It should also be made clear to the person concerned that the child continues to remain in the custody of the institution concerned, but is only temporarily placed with that person in foster care pending the child's adoption order or guardianship order, and such placement in foster care will not be considered as relinquishment of custody by the institution concerned. A clause to this effect should form a part of the foster care agreement."

will continue to be followed for in country adoption.

6. The Family Courts/District Courts will hereinafter be governed by the direction as contained in the afore mentioned paragraph.

7. Another grievance made by the petitioners is that the matters pertaining to in country adoption are pending for over six months. In our view considering the need to provide early foster care in the interest of the child and subsequent orders for adoption the Family Courts/District Courts are decided to complete the entire process as far as possible within two months in terms of the judgment in Laxmani Kant Pandey vs. Union of India, AIR 1984 S.C. page

8. Rule made absolute accordingly. No order as to costs.

(**F.I.REBELLO**, J)

(**R.M. SAVANT,J)**